

Internal Revenue Service
memorandum

TL-N-1914-84

WHEARD CC:TL:TS

date: FEB 19 1988

to: District Counsel, Portland W:POR
Attn: Shirley Francis

from: Chief, Tax Shelter Branch CC:TL:TS

subject: [REDACTED]

This is in response to your request for technical advice of December 4, 1987.

ISSUE

1. Whether the stay provision of I.R.C. § 6503(i) applies to I.R.C. § 6229(f).

2. Must the Service wait until the case based upon an invalid notice of deficiency is dismissed for lack of jurisdiction before we issue a second statutory notice.

CONCLUSION

1. Section 6229(f) provides for a separate period of limitations from I.R.C. §§ 6501 and 6502, and since section 6503(i) by its own terms only stays the running of the periods for assessment under sections 6501 and 6502 it will not stay the running of the period of limitations under section 6229(f). Since no valid notice of deficiency for converted partnership (nonpartnership) items was issued in this case prior to the expiration of the one year period for assessment under section 6229(f) the period of limitations expired on [REDACTED].

2. A proper notice of deficiency could have been issued prior to the dismissal of the earlier invalid notices since the earlier notices had no legal effect. This issue is now moot since the period for assessment has already expired.

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FACTS

On [REDACTED] two notices of deficiency were improperly issued to [REDACTED] for TEFRA partnership items for [REDACTED]. On [REDACTED] [REDACTED] petitioned the Tax Court on the notices of deficiency containing only TEFRA partnership items. We moved to dismiss the case for lack of jurisdiction. on [REDACTED].

On [REDACTED], the Service issued an FPAA to [REDACTED] which subsequently petitioned the Tax Court based on the FPAA.

On [REDACTED], [REDACTED] filed for bankruptcy which converted her partnership items to nonpartnership items under Temp. Treas. Reg. § 301.6231(c)-7T. On [REDACTED] [REDACTED] received a discharge in Bankruptcy.

DISCUSSION

Section 6501 provides a three year period for assessing "any tax" imposed by the Internal Revenue Title which would include any tax attributable to partnership and affected items. The three year period begins to run with the filing of "the return." Since Congress enacted section 6501 when partnership and affected items were determined at the partner level the return in question is the return filed by a partner.

Section 6229(a) provides:

(a) General Rule- Except as otherwise provided in this section, the period for assessing any tax imposed by subtitle A with respect to any person which is attributable to any partnership item (or affected item) for a partnership taxable year shall not expire before the date which is 3 years after the later of -

- (1) the date on which the partnership return for such taxable year was filed, or
- (2) the last day for filing such return for such year (determined without regard to extensions).

It is the position of the Service that the "shall not expire" language gives the Service the benefit of either of the two three year periods to assess under section 6501 or section 6229(a) whichever is longer.

In the present case both [REDACTED] and [REDACTED] filed their returns on or before [REDACTED], for their calendar [REDACTED] tax year. Neither of them agreed to extend the period for assessment. Thus, the period for assessment under section 6501 expired on [REDACTED]. The period for assessment remained open, however, under section 6229(a) which period was suspended under section 6229(d) upon the issuance of an FPAA on [REDACTED].

On [REDACTED], [REDACTED] filed for bankruptcy which converted her partnership items to nonpartnership items under I.R.C. § 6231(b) and Temp. Treas. Reg. § 301.6231(c)-7T. With respect to converted partnership items section 6229(f) provides:

If, before the expiration of the period otherwise provided in this section for assessing any tax imposed by subtitle A with respect to the partnership items of a partner for a taxable year, such items become nonpartnership items by reason of one or more of the events described in subsection (b) of section 6231, the period for assessing any tax imposed by subtitle A which is attributable to such items (or any item affected by such items) shall not expire before the date which is one year after the date on which the items become nonpartnership items.(emphasis supplied)

Thus, under section 6229(f) the Service had until [REDACTED] to issue a notice of deficiency unless section 6503(i) stayed the period for assessment.

Section 6503(i) provides:

The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or collection shall, in a case under title 11 of the United States Code, be suspended for the period during which the Secretary is prohibited by reason of such case from making the assessment or from collecting and-

- (1) for assessment, 60 days thereafter, and
- (2) for collection, 6 months thereafter.
(emphasis supplied)

Section 6503(i) does not apply to section 6229(f) since section 6503(i) by its own terms only applies to sections 6501 and 6502. Once [REDACTED]'s partnership items were converted to nonpartnership items by her filing for bankruptcy only the issuance of a notice of deficiency could have suspended the one year period for assessment under section 6229(f). Since no valid notice was sent by [REDACTED], the end of the one year period for assessment, the period for assessment has already expired. Since the first notices of deficiency were prohibited by TEFRA and were thus invalid, they did not suspend the period for assessment under section 6503(a)(1).

SECOND NOTICE OF DEFICIENCY

The first notices of deficiency was proscribed by TEFRA provisions I.R.C. §§ 6221 and 6225. Thus, they were invalid and conferred no jurisdiction on the Tax Court with respect to [REDACTED]'s partnership items. Their effect, therefore, is as if no notices had been sent at all. See Maxwell v. Commissioner, 87 T.C. 783 (1986); Sparks v. Commissioner, 87 T.C. 1279 (1986). Thus, a second notice of deficiency could have been issued prior to [REDACTED], which would have suspended the running of the period for assessment pursuant to the stay provision of section 6501(a)(1).¹ Since no valid notice of deficiency was issued prior to the expiration of the one year period for assessment under section 6229(f), however, this issue is now moot.

Please refer any questions you may have about the above matter to William Heard at FTS 566-3233.

KATHLEEN E. WHATLEY

By: 
R. ALAN LOCKYEAR
Senior Technician Reviewer

¹ Congress made a technical correction to section 6503(a)(1) in the 1986 Tax Act to make that section applicable to stay the running of the periods for assessment provided for in section 6229 upon the issuance of a notice of deficiency and/or the filing of a petition. The technical correction is retroactive to the date of enactment of TEFRA.